

The California Land Conservation (Williamson) Act



2002 Status Report



Gray Davis
Governor
State of California

Mary D. Nichols
Secretary for Resources
The Resources Agency

Darryl Young
Director
Department of Conservation

III. OPEN SPACE SUBVENTION ACT PAYMENTS

Open Space Subvention Act

The Open Space Subvention Act provides for the partial replacement of local property tax revenues foregone as a result of participation in the Williamson Act and other enforceable restriction programs.

Since the first Open Space Subvention payments made in fiscal year 1972-73, the State has distributed over \$600 million to counties and cities in support of the Williamson Act program. The \$38,777,414 claimed in subventions for 2001 is the largest since the program's inception. Also, the 15,794,629 acres reported as eligible for subvention payment in 2001 is the largest amount of eligible acreage reported since 1981.

While prime farmlands constitute one-third of statewide enrollment, they accounted for roughly 73 percent of total subventions in 2000 and 2001. Other enforceably restricted lands, including Open Space Easement lands that qualify for subvention payments, accounted for 0.1 percent of total subventions in 2000 and 2001.

Counties administered 99.9 percent of the Williamson Act acres reported for State subvention payments in 2000 and 2001. Further, 99.9 percent of the State subvention payments in 2000 and 2001 went to counties. In 2001, seven cities claimed a total of \$9,301 in subventions for 5,675 acres of contracted land.

Not all Williamson Act contracted land is eligible for subvention payment. For example, local governments generally cannot claim subventions on contracted land that is under nonrenewal or valued for property tax purposes at Proposition 13 levels. In 2000 and 2001, approximately 3 percent of the statewide enrollment was not eligible for subvention payment.

In terms of "Total Agricultural Value", the San Joaquin Valley is California's most important region. In 1999, six of California's top ten agricultural counties were San Joaquin Valley counties. The San Joaquin Valley contains about 44 percent of the total statewide Williamson Act enrollment, and accounts for 61 percent of total subventions. The already high concentration of contracted land in the San Joaquin Valley was bolstered in 2001 with the participation of Merced County.

Cross-Reference: Pages 39-41, Appendix C

Top 10 Counties with the Largest Subvention Entitlement

2000				2001			
Ranking		County	Dollars	Ranking		County	Dollars
1999	2000			2000	2001		
1	1	Fresno	5,757,402	1	1	Fresno	5,695,608
2	2	Kern	5,233,922	2	2	Kern	5,316,531
3	3	Tulare	3,506,396	3	3	Tulare	3,535,692
4	4	Kings	2,786,645	4	4	Kings	2,848,140
5	5	San Joaquin	1,991,968	5	5	San Joaquin	2,030,307
6	6	Stanislaus	1,722,411	6	6	Stanislaus	1,743,361
8	7	Madera	1,359,352	8	7	Yolo	1,387,682
7	8	Yolo	1,354,347	7	8	Madera	1,348,231
9	9	San Luis Obispo	1,074,304	n/a	9	Merced*	1,195,385
10	10	Tehama	978,674	9	10	San Luis Obispo	1,110,728

*Newly enrolled county as of January 1, 2001

Open Space Subvention Act Payment Claims By Region (Dollars)*

Region	Land Conservation Act		Farmland Security Zone				Other Eligible Open Space	Total
	Prime	Nonprime	Urban		Non-Urban			
			Prime	Nonprime	Prime	Nonprime		
Bay & Central Coast	1,186,340	2,798,437	30,866	92,497	38,002	1,596	18,215	4,165,953
Foothill & Sierra	284,364	678,439	0	0	5,825	3,616	966	973,209
North Coast & Mountain	933,574	1,411,647	4,360	0	2,170	119	392	2,352,262
Sacramento Valley	3,724,460	1,695,484	133,920	32,120	379,793	3,925	61	5,969,762
San Joaquin Valley	18,553,226	2,843,834	575,018	4,695	1,719,891	15,905	686	23,713,255
South Coast & Desert	898,048	638,533	8,610	827	916	44	40,052	1,587,031
Totals	25,580,012	10,066,374	752,774	130,139	2,146,597	25,204	60,371	38,761,471

*Year 2001. Actual payment totals may differ slightly due to audit adjustments and/or enforcement actions

IV. PERFORMANCE REVIEW

Williamson Act Lot Line Adjustments

The Department of Conservation has prepared this performance review pursuant to Government Code §51257(d). Beginning with a brief discussion of the origin and evolution of §51257, this review then transitions to an evaluation of the implementation and efficacy of §51257, based on the Department's experience. Lastly, the Department makes recommendations to the Legislature pertaining to the sunset clause. Unless extended by statute, a January 1, 2004, sunset provision in §51257(e) will terminate the current provision and leave the Williamson Act silent on the issue of lot line adjustments (LLAs). The Legislature may decide to repeal or extend the sunset clause.

Origin and Evolution

Government Code §51257 recognizes and creates a process that permits and facilitates LLAs on Williamson Act contracted land. The lot line provisions were enacted as part of Senate Bill 1240 (Costa, Chapter 495, Statutes of 1997). Prior to the enactment of §51257, the Williamson Act made no provision for LLAs on contracted land.

The Williamson Act's silence on this matter contributed to the inconsistent treatment of LLAs on contracted land by local governments. In the mid-1990's, the Williamson Act Advisory Committee reviewed LLA implementation and recognized that the absence of LLA provisions within the Williamson Act was problematic. The Committee recommended amending the Act to facilitate LLAs on contracted lands, by authorizing an alternative to termination by nonrenewal or contract cancellation—subject to certain restrictions. The Committee's proposed LLA amendment was contained in Senate Bill 1240, which the Department of Conservation sponsored.

As enacted, Senate Bill 1240 recognized the rescission and simultaneous creation of a new contract or contracts for the purpose of recognizing the legal parcel boundaries of property reconfigured by LLAs on Williamson Act land. LLAs can be approved pursuant to §51257, provided that the board or council makes a series of findings.¹ Senate Bill 1835 (Johnston, Chapter 690, Statutes of 1998) made technical, nonsubstantive changes to the findings effective January 1, 1999. Senate Bill 985 (Johnston, Chapter 1018, Statutes of 1999) added an additional required finding (§51257(a)(7)), effective January 1, 2000, which read: "The lot line adjustment does not result in a greater number of developable parcels than existed prior to the adjustment, or an adjusted lot that is inconsistent with the general plan."

Conflicts

The Williamson Act's enormous impacts on and crucial value to State and local efforts to preserve agricultural and open space land and community planning efforts have been well documented by the Williamson Act Task Force and Advisory Committees. To a lesser extent these panels also acknowledged the additional beneficial consequences of these efforts in stabilizing land demand in local real estate markets.

Unfortunately, local conflicts can arise when land development speculators seek to take advantage of the relatively low and stable prices of Williamson Act contracted land, particularly when the resulting plans do not fully consider the obligatory restrictions of Williamson Act contracts and the statute.

In fiscal year 1996-97, the Department began an annual Williamson Act/Open Space Subvention Act compliance audit program. Through the compliance audits carried out on behalf of the Department of Conservation by staff auditors from the Department of Finance, the Department discovered issues in Monterey, Tehama, Stanislaus and Tuolumne counties over the use of lot line adjustments.

In the audit of Tehama County, the Department learned that a LLA had been approved that resulted in small, residential type lots on a parcel of land under Williamson Act contract. The LLA resulted in the sale of several of the resulting reconfigured lots for residential use while the property continued to be restricted by Williamson Act contract. Since the historic agriculture in this area entails grazing operations and rural residential development can conflict with this type of agricultural operation, the conversion of the property to residential use would conflict with the restrictions of Williamson Act contract. Subsequently, the County, through its Planning Director, approved another LLA, this time on a 3,300-acre ranch that resulted in first 32, and later 29, different parcels. The Department expressed serious concerns about the County's action, since the Department believes it resulted in the creation of new parcels of a residential nature in agricultural preserves in violation of the LLA provision in the Subdivision Map Act and the Williamson Act.²

The Department, on several occasions, expressed the view that the statute requires the Tehama County Board of Supervisors to review all LLAs involving Williamson Act contracted land. As noted above, Senate Bill 1240, among other things, added a new provision to the Williamson Act requiring that the board of supervisors or city council with jurisdiction over the contract make findings for approval of LLAs on property subject to Williamson Act contracts. On August 22, 2000, the Tehama County Board of Supervisors adopted County Ordinance 1733, providing for Board review of all Williamson Act LLAs, and requiring all of the findings to be made, as required by §51257.

LLAs may open up grazing land (or crop land in other cases) for residential development while permitting the land to stay under contract. Under the provisions of the Open Space Subvention Act, the mechanism by which the State has offset the property tax losses inherent in local Williamson Act participation, the local government could still apply to the Department for subventions, and the State would still be expected to subsidize local property tax losses.

IV. PERFORMANCE REVIEW

After the Planning Director approved both the LLA on the 3,300-acre ranch and another involving 163 parcels on a ranch of 27,000 acres of predominantly Williamson Act contracted land, the Department was asked by local agricultural interests to investigate the County's actions.

The Department began a formal investigation into the Tehama County LLA in 2000. The Department believes the County has violated the requirements of the Williamson Act relating to LLAs. An additional issue unique to Tehama County is the existence of an ordinance that permits a landowner and the County to count government survey section and quarter-section lines as if they were legally created parcel boundaries, in contravention of case law and a recent Attorney General's opinion.

During the course of investigating this issue, the Department was in routine communication with agricultural landowners and County staff. Despite repeated requests from the Department, the County failed to rescind the approvals of the LLAs. Thereafter, the Department and the Attorney General met with representatives of the County and with representatives of the landowner to discuss the Department's concerns. Since those meetings failed to produce a solution, the Department determined that the only remaining course of action was to initiate a lawsuit against the County, naming the landowners as Real Parties in Interest.³ The complaint was filed on May 15, 2001.⁴

Other Counties

The Department has found similar, smaller versions of the lot line issue in several other counties, most notably Monterey, Stanislaus and Tuolumne. In Monterey County, the Department successfully negotiated a solution that resolved the issue, and resulted in the County adopting a new procedure for lot lines in accordance with the Williamson Act provisions. In Stanislaus County, the Department is providing intensive assistance to local planners dealing with requests for LLAs, and has met with County staff to go over the statutory provisions and answer specific questions that staff members raised. In Tuolumne County, the Department has identified what appears to be a serious violation of the Williamson Act, involving a gated residential community being developed on Williamson Act contracted land pursuant to LLA. In that situation, lakeside grazing land parcels adjacent to Tulloch Reservoir have been adjusted into relatively small parcels (5 acres or less) and residences are being constructed, although the land remains under contract. The Department is currently contemplating enforcement options.

The current lot line adjustment provisions are causing numerous problems statewide and are resulting in development on contracted land contrary to provisions of the Act and its constitutional underpinnings. In addition, considerable Department staff time and audit contract funds are being used to attempt to correct these violations. Extension of the current provisions indefinitely would result in substantial costs to the Department.

Recommendations

- 1) Extend or eliminate the sunset date for the existing Williamson Act LLA provision in §51257(e).** Despite any imperfections in the current provision, having a statutory mechanism specific to the Williamson Act is crucial.
- 2) Seek legislation clarifying the general applicability of §51257 to all LLAs on Williamson Act contracted land.** There have been claims from landowners and local governments that the existing provisions are optional, rather than mandatory. The Legislature could appropriately clarify that the provisions of the section apply to any lot line adjustments on contracted land.
- 3) Consider seeking legislation amending §51257(c), which currently reads:**

Only one new contract may be entered into pursuant to this section with respect to a given parcel, prior to January 1, 2003.

Although the Subdivision Map Act's LLA provision (Government Code §66412(d)) was amended by Senate Bill 497 (Sher, Chapter 873, Statutes of 2001) to limit its application to LLAs involving four or fewer parcels, nothing prevents subsequent applications of four LLAs per application, each application seeking additional LLAs on other, contiguous or discontinuous parcels in the same ownership. This would include limiting lot line adjustments on contracted land to one parcel per contract, as long as the parcel remains under contract.

- 4) Consider seeking legislation repealing or amending §51257(d), which currently reads:**

In the year 2002, the Department's Williamson Act Status Report, prepared pursuant to §51207, shall include a review of the performance of this section.

As an alternative to repeal, the Legislature may wish periodic updates on the operation of this section if it chooses to extend or eliminate the sunset provision (Recommendation 1).

- 5) Consider seeking legislation to avoid abuses of the lot line adjustment provisions, while still allowing flexibility to agricultural landowners.** This would include revising the findings in §51257(a) to state that lot line adjustments: (1) must involve less than 10 acres in total for any one contract; and (2) no new residences will be permitted on any parcel adjusted through these provisions.

-- Footnotes on Page 20 --

IV. PERFORMANCE REVIEW

Footnotes

¹The original required findings are:

- (1) The new contract would enforceably restrict the adjusted boundaries of the parcel for an initial term at least as long as the unexpired term of the contract being rescinded, but in no event for less than 10 years.
- (2) There is no net decrease in the amount of the acreage restricted. In cases where two parcels involved in a lot line adjustment are both subject to contracts rescinded pursuant to this section, this finding will be satisfied if the aggregate acreage of the land restricted by the new contracts is at least as great as the aggregate acreage restricted by the rescinded contracts.
- (3) At least 90 percent of the land under the former contract remains under the new contract.
- (4) After the lot line adjustment, the parcels of land subject to contract will be large enough to sustain their agricultural use, as that term is used in §51222.
- (5) The lot line adjustment would not compromise the long-term agricultural productivity of the parcel or of other contracted lands.
- (6) The lot line adjustment is not likely to result in the removal of adjacent land from agricultural use.

As previously noted, Senate Bill 985 (Johnston, Chapter 1018, Statutes of 1999) added a new finding (§51257(a)(7)), effective on January 1, 2000. The new finding reads:

- (7) The lot line adjustment does not result in a greater number of developable parcels than existed prior to the adjustment, or an adjusted lot that is inconsistent with the general plan.

²Government Code §66412(d)

³Only the landowners were named as Real Parties because there was evidence that the owners intended to begin selling the parcels resulting from the County's approval of the lot line adjustment. According to counsel for the landowner, the 27,000-acre property was adjusted in order to increase the development value of the property so that the owner could reap a greater return by selling the development rights to a public agency. As such, the potential for near-term residential sales on that property was believed to be much lower.

⁴People of the State of California ex rel, Bill Lockyer, Attorney General, Mary D. Nichols, Secretary, Resources Agency, and Darryl Young, Director, Department of Conservation v. Tehama County Board of Supervisors, George Robson, Tehama County Planning Director, KAKE, LLC, et al, Tehama County Superior Court, Case No. CI 48890.

V. COMPLIANCE AUDITS

In 1988, Williamson Act and Open Space Subvention Act program audits were initiated for participating Williamson Act counties and cities. At that time, the Department of Conservation contracted with the Department of General Services to conduct audits of several counties. As a result of those initial audits, approximately \$550,000 in subventions was recaptured for payments made on land not eligible for subventions and for cancellation fees paid to counties but not forwarded to the State. In fiscal year 1996-97, the Department began an annual Williamson Act/Open Space Subvention Act compliance audit program through contracts with the Department of Finance. From fiscal year 1996-97 to present, the State has invested \$450,000 to conduct the annual audits. This investment has resulted in a return to the General Fund of \$1,179,163 from the recapture of subvention overpayments and unpaid contract cancellation fees.

Claiming subvention on land not eligible for payment is the most frequent cause of subvention overpayments. This includes land starting through the contract nonrenewal process, and land valued lower under Proposition 13 valuation for regular Williamson Act contracts. Another problem area is when cancellation fees are collected by local governments and not submitted in a timely manner to the State Controller's Office. A recent, serious set of concerns relating to the use of lot line adjustments on Williamson Act contracted land is noted in the "Performance Review" above.

Besides the subventions recovered by the audits, a major benefit is the correction of procedures for cities and counties that may not have followed the Williamson Act requirements and restrictions. The audit findings provide reassurance to both local governments and the State that the provisions of statute are being followed. Since 1972, over \$600 million in State subventions have been certified to local governments to provide replacement revenues for the loss in tax revenue and administrative costs resulting from participation in the Williamson Act program. The audit program provides a valuable check to ensure that the program is administered according to statute at the local level, and to carry out the State's fiduciary responsibility for a major investment.

- **Fiscal year 1996-97** audits of Kern, San Joaquin and Tulare Counties recaptured \$65,087 in subvention overpayments. The audit also discovered a contract violation that led to the Department's initiation of legal action to remedy the violation. The resolution of the contract enforcement action resulted in a payment of \$100,000 to the Agricultural Land Stewardship Fund, and the money was subsequently used to fund acquisition of perpetual agricultural conservation easements.
- **Fiscal year 1997-98** audits of Fresno, Kings, Stanislaus and Madera Counties resulted in the recapture of \$165,607 in subvention overpayments.
- **Fiscal year 1998-99** audits of San Luis Obispo, Riverside, Monterey and Tehama Counties resulted in the recapture of \$958,497 in subvention overpayments. Of this amount, \$911,298 was for cancellation fees collected by Riverside County but not forwarded to the State Controller's Office.
- **Fiscal year 1999-00** audits of Colusa, San Diego and Yolo Counties resulted in the recapture of \$150,406 in subvention overpayments.
- **Fiscal year 2000-01** audits of Contra Costa, Glenn, San Benito, Santa Barbara and Tuolumne Counties resulted in the recapture of \$5,000 in overpaid subventions.
- **Fiscal year 2001-02** audits of Marin, Mendocino, Placer, San Bernardino and Santa Clara Counties resulted in the recapture of \$57,980 in subvention overpayments.

VI. ENROLLMENT MAPPING

In 1994, the Division of Land Resource Protection identified a need to establish a Geographic Information System (GIS) for the Williamson Act and Open Space Subvention Act programs. Establishing a GIS would facilitate decision-making and policy recommendations, provide more complete information to constituents, and aid in assessing the accuracy of claims for Open Space Subvention Act payment. The identification of this need was followed by an investigation into the feasibility of producing digital, GIS-compiled Enforceable Open Space Restriction maps.

Beginning in 1996, a 12-month pilot project for Williamson Act mapping was approved. The intent of this project was twofold: 1) make a precise assessment of the time frame and problems associated with production, publishing and updating of county-wide Williamson Act enrollment maps; and 2) gauge the usefulness of such maps in improving internal administration and increasing levels of service to constituents.

The end of calendar year 1997 saw twelve Williamson Act enrollment maps produced by the project. The response to the project among internal and external stakeholders was overwhelmingly positive. During 1997, the maps were instrumental in expediting and/or improving a variety of projects related to the Williamson Act and Open Space Subvention Act program administration.

Permanent funding for the mapping program was secured in 2001. The primary tasks for the mapping program are:

- Establish and maintain an electronic data library of Williamson Act GIS and scanned Williamson Act map imagery (geo-referenced TIFF image files).
- Respond to inquiries for data and GIS assistance from public agencies and private entities.
- Inform counties about mapping requirements and regulations in California Code of Regulations §14111 - Material to Accompany Application Reports.
- Establish and maintain working relationships with local governments participating in the Williamson Act program.

The result of this new focus has been that the program has been largely successful in the first three tasks and making rapid progress on the fourth. During fiscal year 2001-02, the program began printing the series of Williamson Act county maps and worked with counties to enhance the accuracy of the data to allow more analytical work using the maps.

Information contained in the Williamson Act paper maps:

Williamson Act classifications

- Williamson Act -- Prime Agricultural Land
- Williamson Act -- Non-Prime Agricultural Land
- Williamson Act -- Land in Nonrenewal
- Farmland Security Zone (FSZ) Land

Prominent physical and cultural features

- Public Land Survey System (township, range and section grid with at least the township and range numbered)
- Hydrological features
- Highways
- City boundaries
- City Sphere of Influence and 3-mile buffer of sphere(s) for counties participating in the FSZ Program
- Legend to show map projection, map features clearly defined, date of printing, agency responsible for printing the map and contact information
- Preferred scale is 1:100,000, but not less than 1:125,000

Information contained in the Williamson Act GIS maps:

A GIS layer containing the same information on Williamson Act classifications as the paper map.

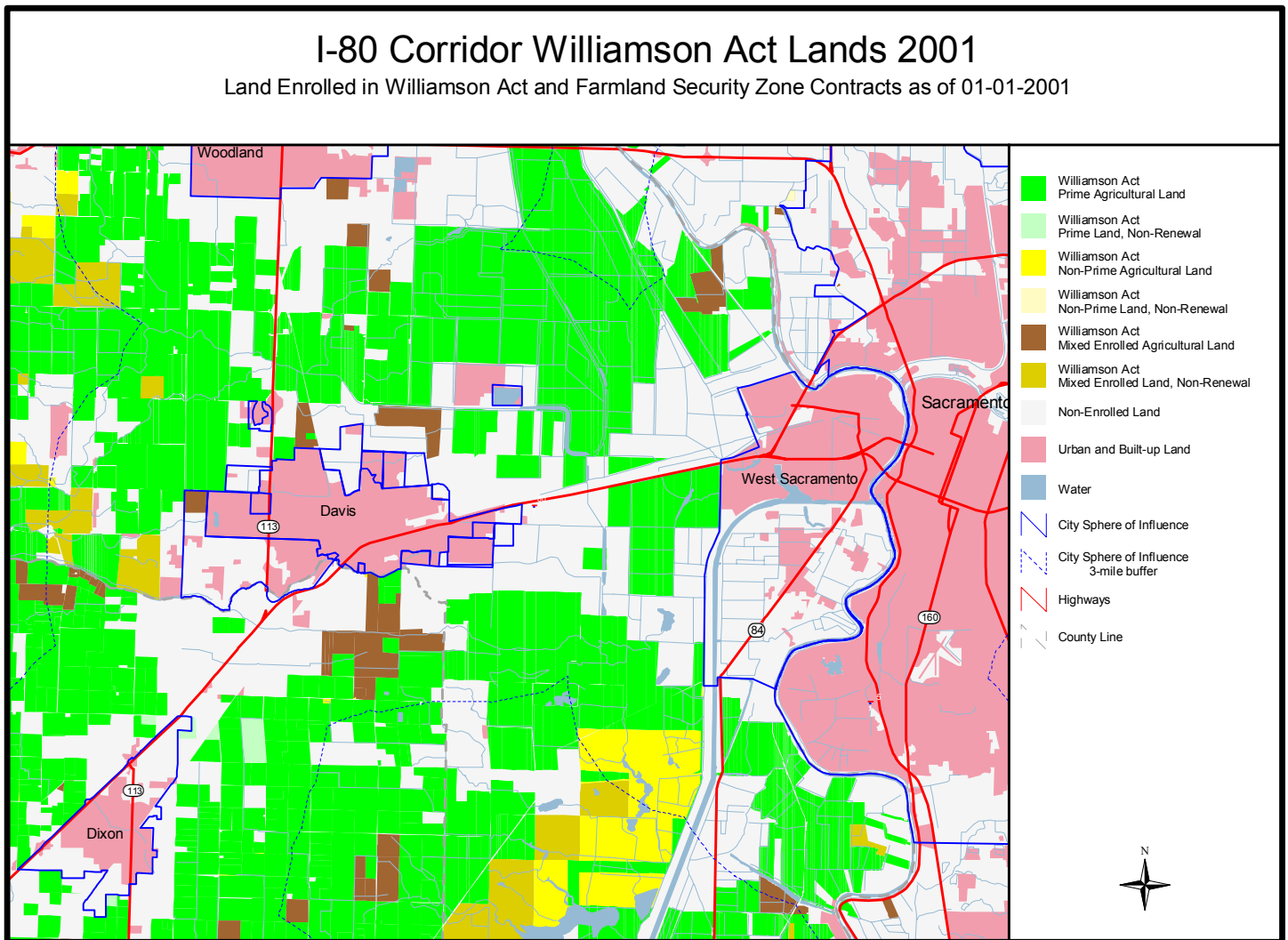
Prominent physical and cultural features

- Current City boundaries layer with names
- Current City-Sphere of Influence for counties participating in the FSZ program.
- Other features are currently available to the Department.

Submittals also include a metadata document outlining the layer(s) projection, coordinate system, database column names and meanings.

(Refer to California Code of Regulations §14111 - Material to Accompany Application Reports, for the full text of the regulations).

VI. ENROLLMENT MAPPING



Excerpt from a Williamson Act enrollment map